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Y2K, The Millennium for a Revised U.S.-Cuba Trade Policy: Grounds For Removing the Embargo

*Rolando J. Santiago**

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I. Introduction.

There has been a great push in the last few years domestically¹ and internationally² to lift the U.S. economic embargo on Cuba. Former President Richard Nixon in his last book, *Beyond Peace*, wrote, "[w]e should drop the economic embargo [on Cuba] and open the way to trade, investment, and economic interaction, while insisting that ideas and information be allowed to flow as freely as goods."³ I agree that the United States should lift its embargo on Cuba.

Experts argue that it would be an absolute mistake to remove the embargo so long as Castro and his regime remain in power. Other experts take a less absolutist position and simply argue that it would be a mistake for the United States government to remove the embargo *unconditionally*. Both factions base their position on what this author believes is an antiquated and time-proven inadequate foreign policy.⁴ Those that favor the embargo argue that it is the most potent weapon on the planet to liberate the Cuban people. That ideology is premised on a theory that relies on the Cuban worker class to recognize what a wonderful array of goods, services, and lifestyle they are being deprived of, and then to organize themselves into a political voice for change. In turn, the Cuban government (Fidel Castro) will either listen to the cries of the people and make appropriate changes, or be displaced by the Cuban people. Unfortunately, that theory has not worked as planned, and the United States government should now consider taking a more proactive approach.

The transition from an embargo status to a non-embargo status with Cuba should constitute a clear and defined objective, an objective that can only be achieved through diplomatically careful and efficient means by all parties involved.⁵ [It is this author's position that the United States should not simply lift the embargo without both parties first establishing certain reasonable and ascertainable goals and concessions.]

Clearly, it is no surprise that lifting the embargo would benefit Cuba much more than it would the United States. For that reason, care must be taken to ensure an orderly transition in Cuba. For example, it would be critical to the post-embargo transition

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1. See *Cuban-American Representatives Oppose Review, Warner Is Chief Congressional Backer*, RICHMOND TIMES-DISPATCH, Nov. 25, 1998, at A12 (Senator Warner, Henry Kissinger, and others proposed a bipartisan panel to review U.S. policy toward Cuba). See also Ellen O'Brien, *Law Again Calls for End to Cuban Embargo: Cardinal Cites 'No Moral Justification,' Urges Bipartisan National Commission*, BOSTON GLOBE, Mar. 14, 1998, at A2 (Cardinal Bernard Law calls U.S. embargo on Cuba a failure).
 2. See, e.g., UN: *Assembly Urges States to Repeal/Invalidate Laws with Effect on Sovereignty, Free Trade, Navigation*, M2 PRESSWIRE, Oct. 15, 1998, available at 1998 WL 16527843. The UN General Assembly adopted a resolution advocating the end of the U.S. embargo on Cuba with 157 members voting in favor, two against, and twelve abstentions.
 3. RICHARD NIXON, *BEYOND PEACE* 138 (1994).
 4. See Ignacio Meneses, *Our Strategy Doesn't Lead to Capitalism*, 5 BARAGUA 10 (1995). One of the primary reasons the United States adopted this tough isolationist policy was due to the perceived threat of Cuba as the "bridgehead of Sino-Soviet imperialism within the inner defenses of the Western Hemisphere." This is no longer a credible threat today; therefore, policies based on that threat are equally obsolete.
 5. The primary parties are the United States and Cuba; however, European Union nations and Latin American governments should also be consulted and asked to participate collectively.
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process for the Cuban government to concede on the issues of human rights and political freedom. However, because of the inflammatory nature of this particular issue, time and international assistance will be needed in order for the Cuban government to establish an internationally acceptable judicial review policy for post-embargo allegations and prosecutions of embargo-era crimes. Political realism dictates that there may be a need for amnesty and immunity legislation for select members of the Castro government. Therefore, in order to receive the immense positive benefits and to cope adequately with the negative aspects that will result from normalizing trade with the United States, the transition must be measured, thorough, and strategically planned with special attention to foreseeable domestic and international concerns.

This article will focus on the problems of the existing embargo policy with Cuba and discuss possible avenues for change. There will be a brief discussion on the politics and policies for dealing with Cuba over the last four decades and, of course, the most recent U.S. policy change toward trade with Cuba, the Helms-Burton law.⁶ We will look at how the United States handled the process of normalizing trade with China and whether adopting a similar policy may be an option for dealing with Cuba. Finally, I will put forth certain recommendations on how to achieve the goal of establishing normalized relations with Cuba without offending anti-Castro political interest in the United States and without offending the spirit of Helms-Burton. In short, the focus of the article is to explore ideas for making positive strides toward improved relations between the government of Cuba and the United States.

II. Four Decades of Fidel Castro: Two Reasons Why the Embargo Has Not Been Lifted.

At first glance one may ask, if the benefits are so great, then why has Fidel Castro not agreed to the conditions set forth by the United States to lift the embargo? The reason is rather simple. Castro is determined and stubborn in his ways. Although he is willing to entertain dialogue with the United States and discuss the various hot issues—immigration and the embargo—he refuses to acquiesce or to reach compromise.

A. IF THE EMBARGO WERE LIFTED, ECONOMIC REALITIES WOULD FORCE A TRANSITION OF POWER IN CUBA.

Gordon Craig and Alexander George in their book *Force and Statecraft* argue that there is a distinction between totalitarian and liberal-democratic governments during negotiations.⁷ The liberal-democratic tradition is based on faith and reason in the repulsion of conflict, reliant on a fundamental belief that conflict is detrimental to society.⁸ On the other hand, Craig and George point out that totalitarian governments do not conform to these ideals and, therefore, operate by their own rules.⁹ For example, Craig and George point out how the Soviets, in the 1920s and 1930s, would appear to agree to suggestions made by the

6. 22 U.S.C. §§ 6021-6024 (1999).

7. See GORDON A. CRAIG & ALEXANDER L. GEORGE, *FORCE AND STATECRAFT: DIPLOMATIC PROBLEMS OF OUR TIMES* 87 (Oxford Univ. Press 2d ed. 1990).

8. See *id.* at 87-88.

9. See *id.* at 88.

West during meetings, yet inevitably they would revert to their original positions when pressed for a definite commitment.¹⁰ However, Craig and George also point out that when the German Nazis became a threat to the Soviet Union the Soviets then began to negotiate with the West to create a collective security arrangement.¹¹ Therefore, Craig and George conclude that totalitarian governments will only abandon their principles for pragmatism when their survival and national interests are at stake.¹²

If the theory of Craig and George is true, then more than likely Castro will agree to allow political freedom on the island only when his economic interests are in grave danger. Before 1991, \$4.5 billion a year in direct subsidies from the Soviet Union assured Communist Cuba that its economic interests were not in danger.¹³ As a result, the U.S. embargo did not have an effect on the Cuban economy until after 1991. Furthermore, the Cuban Democracy Act of 1992 (hereinafter Cuban Democracy Act)¹⁴ and the Cuban Liberty and Democratic

10. *See id.* at 91.

11. *See id.*

12. *See id.*

13. John P. Sweeney, *Why the Cuban Trade Embargo Should Be Maintained*, BACKGROUNDER 1010 (visited Feb. 10, 2000), <http://www.heritage.org/library/categories/forpol/bg1010.html>.

14. 22 U.S.C. § 6001 (1999). Chapter 69 sets forth the findings, statement of policy for support of the Cuban people, policy for international cooperation, sanctions, policy for transition governments and a myriad of other intents and purposes related to trade, cultural and political exchange with the current Cuban regime and a democratic Cuban government sometime in the post-Castro future. 22 U.S.C. § 6001 (1999) states in full length:
The Congress makes the following findings:

- (1) The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people's exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. It has refused to admit into Cuba the representative of the United Nations Human Rights Commission appointed to investigate human rights violations on the island.
- (2) The Cuban people have demonstrated their yearning for freedom and their increasing opposition to the Castro government by risking their lives in organizing independent, democratic activities on the island and by undertaking hazardous flights for freedom to the United States and other countries.
- (3) The Castro government maintains a military-dominated economy that has decreased the well-being of the Cuban people in order to enable the government to engage in military interventions and subversive activities throughout the world and, especially, in the Western Hemisphere. These have included involvement in narcotics trafficking and support for the FMLN guerrillas in El Salvador.
- (4) There is no sign that the Castro regime is prepared to make any significant concessions to democracy or to undertake any form of democratic opening. Efforts to suppress dissent through intimidation, imprisonment, and exile have accelerated since the political changes that have occurred in the former Soviet Union and Eastern Europe.
- (5) Events in the former Soviet Union and Eastern Europe have dramatically reduced Cuba's external support and threaten Cuba's food and oil supplies.
- (6) The fall of communism in the former Soviet Union and Eastern Europe, the now universal recognition in Latin America and the Caribbean that Cuba provides a

Solidarity Act of 1996¹⁵ (hereinafter *Libertad* Act or Helms-Burton law) have since tightened the embargo. The 1992 Cuban Democracy Act, inter alia, prohibits vessels that enter Cuban ports for trade purposes from loading or unloading any freight at any point in the United States within 180 days after departing the Cuban port. The 1996 *Libertad* Act, inter alia, prohibits U.S. nationals, permanent residents, and U.S. agencies from knowingly financing transactions that involve confiscated property owned by a U.S. national and instructs the U.S. government to oppose Cuban membership to any international financial institution.¹⁶ Together these two Acts have tightened the embargo to a point that arguably makes the economic situation in Cuba unbearable.

failed model of government and development, and the evident inability of Cuba's economy to survive current trends, provide the United States and the international democratic community with an unprecedented opportunity to promote a peaceful transition to democracy in Cuba.

- (7) However, Castro's intransigence increases the likelihood that there could be a collapse of the Cuban economy, social upheaval, or widespread suffering. The recently concluded Cuban Communist Party Congress has underscored Castro's unwillingness to respond positively to increasing pressures for reform either from within the party or without.
 - (8) The United States cooperated with its European and other allies to assist the difficult transitions from Communist regimes in Eastern Europe. Therefore, it is appropriate for those allies to cooperate with United States policy to promote a peaceful transition in Cuba.
15. 22 U.S.C. §§ 6021-6024 (1999) [hereinafter Helms-Burton Act]. The Cuban Liberty and Democratic Solidarity Act of 1996 is part of 22 U.S.C. Chapter 69, known as the Helms-Burton Act, also known as the 1996 *Libertad* Act, is named after its chief congressional sponsors, U.S. Senator Jesse Helms and U.S. Representative Dan Burton. The 1996 *Libertad* Act is listed in four separate sections. First, section 6021 of the *Libertad* Act sets forth the findings and reasoning behind the creation and enacting of the legislation, section 6022 categorizes the purposes of the act, section 6023 provides definitions for terms used in the act, and section 6024 provides a four-part method and system for application of the act.
 16. 22 U.S.C. §§ 6033, 6044 (Supp. II 1996). The pertinent language of the statutes is as follows:
§ 6033—Prohibition against indirect financing of Cuba
 - (a) Prohibition
Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of March 12, 1996, except for financing by the United States national owning such claim for a transaction permitted under United States law.
 - (b) Suspension and termination of prohibition
 - (1) Suspension
The President is authorized to suspend the prohibition contained in subsection (a) of this section upon a determination made under section 6063(c)(1) of this title that a transition government in Cuba is in power.
 - (2) Termination
The prohibition contained in subsection (a) of this section shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 6064 of this title.

If the economic situation in Cuba is unbearable, then why does the Castro government continue to refuse to implement economic reforms? One reason is the fact that the island has only begun to feel the full effects of the embargo in the last few years. Until 1991, the Soviet subsidies shielded the island from the U.S. embargo, and the Cuban Democracy and *Libertad* Acts have only recently had an impact.¹⁷

B. CASTRO DEFIES THE ODDS AND SURVIVES 40 YEARS OF EMBARGO THROUGH CUNNING LEADERSHIP AND SIMPLE LUCK.

The second, and arguably the most important, reason why Castro's regime has endured through forty years of embargo is that Fidel is an astute leader. Some may choose to call him a despot, a devil, or simply an irrational leader; regardless of the preferred adjective, he is undoubtedly cunning enough to stay in power. In spite of the economic and political reality around him, he refuses to change his policies.¹⁸ For more than thirty years Castro has lived a dream that was largely distorted by Soviet subsidies. However, since 1991, the dream has ended and reality has slowly set in. Nevertheless, Castro refuses to accept that the communist ideal has been a failure and continues to perpetuate a failed system. Castro, a seventy-three-year-old man, does not want to admit that the political system that he created has, in many ways, failed the people it was intended to help. And he may not be entirely wrong.

C. THE FAILINGS AND MERITS OF THE CUBAN REVOLUTION.

Castro may not be totally wrong in refusing to accept that his revolution is a failure. In some respects, the revolution has made positive inroads in the fabric of Cuban society. Pre-Castro Cuba was an economically vigorous society, however, it was an economy functioning by and through the exploitation of the Cuban people. Growing up in Puerto Rico and Latin America, I have heard many accounts of foreigners' grandiose and extravagant¹⁹ visits to Cuba. Pre-Castro Cuban society was a classic representation of the Third World economic and social status quo of abuse and excesses that existed in the 1950s—rampant poverty and a heavily lopsided distribution of wealth.²⁰ The social classes in

17. The impact of the *Libertad* Act could be greater. Title III of the Act makes any person who traffics property confiscated by the Cuban government after December 31, 1958 liable to any U.S. national that owns a claim of that property. 22 U.S.C. § 6082 (Supp. II 1996). However, President Clinton has continuously exercised his right to suspend the right of action under Title III for six-month periods. See *U.S. Suspends Right to Sue Foreign Firms over Cuba*, WALL ST. J., July 17, 1997, at A1.

18. See Linda Robinson, *The Same Old Ballgame: Clinton Eases the Cuban Embargo, but not Much is Changing*, U.S. NEWS & WORLD REP., Jan. 18, 1999, at 34, available at 1999 WL 8432103. Castro told a crowd of invited guests on January 1, 1999, the 40th anniversary of the Cuban Revolution, "I still speak the same, dress the same, and think the same." *Id.*

19. An extravagance that was in many ways perverse. Cuban officials were quick to sell out their own people and resources. In Cuba anything could be bought for a price, and thanks to the exchange rate, the U.S. dollar could buy an awful lot. Foreign playboys, businessmen, and government officers would flock to Cuba in droves to indulge their benign and malignant fantasies alike.

20. Eduardo Moises Penalver, *Redistributing Property: Natural Law, International Norms, and the Property Reforms of the Cuban Revolution*, 52 FLA. L. REV. 107, 124 (2000).

Cuba were markedly divided and social mobility between the classes was almost impossible.²¹ A relatively small cadre of Cuban nationals and foreign investors held a majority of the island nation's wealth. The Batista²² regime, which ruled before Castro took power, was known for its open and brazen corruption. Young Cuban women could look forward to two primary professions: prostitution or domestic servant duties. In urban communities, young Cuban men could hope for low level clerical positions or food and beverage service positions. In rural Cuba, the latifundia²³ culture dictated economic reality; in other words, there were few choices for employment outside of hard, low wage labor on the sugar plantations.²⁴

In stark contrast to pre-Castro Cuba, the revolution has bestowed some benefits on the Cuban people, albeit at a high cost. As a result of the revolution the Cuban people have enjoyed free health care, education, and a more even distribution of wealth and resources, which would not have been possible under Batista.

Foreign investors relish at the thought of gaining access to Cuba's work force.²⁵ They are attracted by the incredible dynamic of a highly educated, healthy, and strategically close work force to the United States.²⁶ The dynamics serve to form a compelling argument for potential foreign investors. Investors remark that, "Cuba's population is city-oriented, and nearly three-quarters of the population live in urban areas. With a 99 percent literacy rate, Cubans are highly-educated, taking advantage of free primary-through-college education," which means that high-tech companies could easily tap into a pool of skilled labor.²⁷ It is common for cab drivers to possess engineering or other advanced

21. Steven E. Hendrix, *Tensions in Cuba Property Law*, 20 HASTINGS INT'L & COMP. L. REV. 1, 13 (1996). The articles makes reference to the difficult economic situation in Cuba prior to Castro, namely, the rigid class structure that made upward social mobility almost impossible for large sections of the population. See Mario Lazo, *Dagger in the Heart! American Policy Failures in Cuba* 59 (1968).

22. Batista y Zaldívar, Fulgencio, (Microsoft® Encarta® Encyclopedia CD-ROM, Microsoft Corp., 1998 ed.). Batista y Zaldívar, Fulgencio (1901-73), Cuban president (1940-44, 1952-59) and dictator of Cuba. Batista joined the Cuban Army in 1921 and quickly went up the ranks. In 1933, Batista was a key player in the coup d'état of Grau San Martín over Cuban leader Carlos Manuel de Céspedes y Quesada. Batista emerged as a leader in the overthrow of Quesada. Under the first regime of Ramón Grau San Martín, Batista was appointed Chief of Staff of the Army and as such gained control of the Cuban government in 1934 by forcing Grau to resign. Ruling first through puppets, he was elected president in 1940. In 1944, however, Grau defeated his handpicked candidate and, for the next eight years, Batista remained in the background. Then, in 1952, he staged a coup with army backing, assumed the presidency, and suspended the constitution; he was ratified in office by a sham election in 1954. An armed revolt, led by Fidel Castro, finally overthrew Batista's corrupt government on January 1, 1959. He spent the rest of his life in exile.

23. Latifundia, defined as a great landed estate, established in Cuba during the Spanish colonial period, with primitive agriculture and labor often in a state of partial servitude. WEBSTER'S THIRD NEW WORLD DICTIONARY (unabridged) (1993).

24. Penalver, *supra* note 20, at 122.

25. See Tim Padgett et al., *Cuba's New Look: Havana is Open for Business, and Eager U.S. Firms are Calling for an End to Four Decades of Embargo*, TIME MAGAZINE, Dec. 6, 1999, Vol. 154, No. 23.

26. *Id.*

27. *Cuba's Domestic Market Grows With Tourism*, *infra* note 28, at para. 17.

degrees, drawn to that profession by tourists' dollar-based tips.²⁸ In short, the transformation of Cuban society because of the revolution has been somewhat positive, at least in regards to the increased degree of education and sophistication of the average Cuban citizen. Naturally, from a capitalist/investor perspective, Cuba is an inviting locale for the attention of foreign manufacturing and the export-import of durable goods. Located approximately ninety miles away from Florida, Cuba is perfectly located for rapid production and shipment to the United States.²⁹

III. Formulating Policy That Looks Beyond Fidel Castro.

A new generation of businessmen and politicians are asking: Why keep the embargo in place if it is unlikely to change Castro's ways or bring about his demise?³⁰ This question is becoming ever more common and is growing in crescendo. The primary organizations wishing to uphold the status quo are those linked to the emotionally supercharged and politically powerful anti-Castro Cuban lobby of South Florida. The strength of the Cuban lobby is something to behold. The Cuban lobby, known as the Cuban American National Foundation, is so powerful that when in full effect it can paralyze Congress and even influence national trade policies.³¹ For example, the *Libertad* Act, which essentially neutered the president's ability to exercise foreign policy, was a direct result of the outcry and anti-Castro fervor that erupted when two U.S.-based Brothers to the Rescue planes were shot down by Cuban Migs. The planes were returning to their base in Florida after

28. *Cuba's Domestic Market Grows With Tourism*, MKT. LATIN AM., Dec. 1, 1996, at para. 16, available at 1996 WL 8913129. Cuba's isolation has allowed its natural assets to remain untouched. "The land rises from pristine beaches on the north coast near Havana to the gently rolling plains that yield tobacco for Cuban cigars (which are banned in the United States, but can be obtained at a very high cost), and on to mountains some 6,000 feet high in the southeast, where exclusive, isolated resort spas are being developed by savvy and insightful foreign investors. The climate is typically tropical, moderated by trade winds, and including a dry season between November and April and a rainy season between May and October." *Id.* One may argue that such wonderful characteristics indicate that Cuba has been named in error, and her real name should be *Paradiso* ("Paradise" in Spanish).

29. See *id.* Cuba is a large island with a land mass area of 44,200 square miles, roughly equivalent to the size of Pennsylvania. Apart from the capital, Havana, which has a population of about two million, the island includes other heavily populated cities such as: Santiago de Cuba, Camaguey, Santa Clara, Holguin, Guantanamo, Matanzas, Cienfuegos, Pinar del Rio, and others.

30. See generally Padgett et al., *supra* note 25. That article discusses the growing popular sentiment in the U.S. business community for lifting the embargo.

31. See Jason S. Bell, *Violation of International Law and Doomed U.S. Policy: An Analysis of the Cuban Democracy Act*, 25 U. MIAMI INTER-AM. L. REV. 77, 93 (1993). The Cuban American National Foundation (CANF) is a powerful Cuban lobbying group. Founded in 1981 by Cuban exile leader Jorge Mas Canosa, "CANF was formed to organize Cubans and bring their political influence to Washington." *Id.* CANFs influence is derived from very generous political campaign contributions to politicians willing to promote or support anti-Castro policies.

having conducted an illegal violation of Cuban airspace and dropping anti-Castro leaflets over Havana.³²

The foreign policies of the United States are designed to represent the interests and security of this nation as a whole. Policy decisions, however, should be sensitive to the concerns of Cuban exiles; nevertheless, negotiation and dialogue with the Cuban government should move forward. Although Fidel Castro has total control of the government as chief of state and commander-in-chief of the armed forces,³³ the United States should endeavor to put the negative past in the historical archives where they belong, and look toward the future of the Cuban people and beyond Castro. At age seventy-two, Castro's fate is rather destined: either he will die in power or he will be overthrown.³⁴ Either outcome is irrelevant because one fact remains constant: in due time, (good ol' pesky thorn-in-our-side) Fidel will be gone. He will succumb to either Mother Nature or political change, and the world community will have a new Cuban government to deal with. Surely, perhaps in irony or comedy, somewhere a footnote in history will cleverly annotate the reality that Castro's demise came from natural causes and NOT the embargo.

It is a faulty notion to perpetuate the falsehood that the United States should continue the embargo under the belief that its thirty-nine-year history will force Castro to leave power or accept democracy. Sadly, this is just not true. As mentioned previously, the

32. Ardy Friedberg & Maya Bell, 'Brothers' Flies Rescue Trips Aimed at Escaping Cubans, ORLANDO SENTINEL, Feb. 25, 1996, at A7, available at 1996 WL 2587651. On Saturday, February 24, 1996, Cuban jets shot down two civilian airplanes that Cuba claimed had violated Cuban airspace. The planes belonged to Brothers to the Rescue, a U.S.-based group headed by Cuban exiles, dedicated to helping Cuban refugees. The leader of Brothers to the Rescue is Jose Basulto, a Cuban exile himself. Mr. Basulto was flying one of three planes that day—the only plane to survive.

Brothers to the Rescue represent the Exile Cuban communities' attempts to take the anti-Castro crusade straight to the Cuban mainland. Basulto, along with other Cuban exile groups, had previously organized, planned, and executed a campaign of what Basulto termed "civil disobedience." *Id.* Beginning in July 1996, Basulto made unauthorized flights over Havana and dropped anti-Castro leaflets. Upon returning from his flight the Federal Aviation Administration (FAA) temporarily grounded and suspended his flying privileges.

The ill-fated February twenty-fourth flight, and several previous flights over Havana, had been in flagrant violation of FAA regulations and undoubtedly resulted in confrontations with both the U.S. and Cuban governments. Inquiries prior to the shooting by Federal investigators revealed that flyers of Basulto's organization had repeatedly broken U.S. aviation laws by flying a U.S.-registered aircraft into a foreign country [Cuba] without first seeking clearance from U.S. and Cuban authorities.

The Federal Aviation Administration characterized Basulto as having acted in a "reckless manner" that endangered lives and property. *Id.* In response, Castro's government warned U.S. officials that Cuban defense forces would reserve the right to defend and attack any future Brothers to the Rescue planes violating Cuban air space. On February 24, 1996, the Cuban government came true on their threat.

33. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Cuba Country Report on Human Rights Practices* (1998) at § 1, at http://www.state.gov/www/global/human_rights/1998_hrp_report/cuba.html (last visited Feb. 12, 2000) [hereinafter *Cuba Country Report*].

34. See generally Rudi Dornbusch, *Getting Ready for Cuba After Castro*, BUS. WK., May 24, 1993, at 19, § 2, available at 1993 WL 2141956 (arguing that the time has come to deal with Cuba because eventually Castro will be gone, whether dead, or in exile, his departure is certain).

embargo has only begun to have an effect in the last few years. Even so, the embargo is only a minimal setback that the resilient and ever-resourceful Cuban people have been able to cope with quite well. After all, the Cuban people have done so much for so long with so little that they are now qualified to accomplish the impossible with nothing.

IV. Origin of the Helms-Burton Law and its Influence on U.S.-Cuba Foreign Policy.

One cannot properly discuss the U.S.-Cuba embargo issue without also discussing the 1996 Helms-Burton³⁵ law. However, due to the overwhelming resources and articles on this issue, I will not delve into the details of Helms-Burton. The following is a brief introduction, history, and discussion on the impacts that the Helms-Burton legislation has had on U.S. efforts to curtail Cuban foreign trade.³⁶

In response to Cuba's February 1996 downing of two civilian aircraft registered in the United States, President Clinton signed the Helms-Burton *Libertad* Act into law on March 12, 1996.³⁷ Cuba shot down two civilian planes from the United States claiming that they were violating Cuban air space. The United States tightened its sanctions against Cuba through such measures as prohibiting all flights from the United States to Cuba in an effort to hurt Cuba's tourist industry. Subsequently, the U.S. Congress drafted and passed the Helms-Burton Act, named after its two sponsors, Senator Jesse Helms and Representative Dan Burton. This Act allowed American citizens to sue foreign companies investing in properties seized from U.S. nationals during the 1959 Cuban Revolution. Other countries and important trading partners, including Mexico, Canada, and members of the European Union (EU), have strongly protested the 1992 Democracy Act and the 1996 *Libertad* Act. U.S. trading partners have not been shy about making their displeasure known to the U.S. government.³⁸ In response to intense concerns and pressure

35. Helms-Burton Act, *supra* note 15.

36. See generally Luisette Gierbolini, Comment, *The Helms-Burton Act: Inconsistency with International Law and Irrationality at their Maximum*, 6 J. TRANSNAT'L L. & POL'Y 289 (1997); Brice M. Clagett, International Symposium on the Cuban Liberty and Democratic Solidarity (*Libertad*) Act of 1996, *The Controversy Over Title III of The Helms-Burton Act: Who is Breaking International Law—The United States, or the States that Have Made Themselves Co-Conspirators with Cuba in its Unlawful Confiscations?*, 30 GEO. WASH. J. INT'L L. & ECON. 271 (1996); David M. Shamberger, *The Helms-Burton Act: A Legal and Effective Vehicle for Redressing U.S. Property Claims in Cuba and Accelerating the Demise of the Castro Regime*, 21 B.C. INT'L & COMP. L. REV. 497 (1998).

37. See Christian Franken, *The Helms-Burton Act: Force or Folly of the World's Leader?*, 7 MINN. J. GLOBAL TRADE 157, 158 (1998). See generally Friedberg & Bell, *supra* note 32.

38. See "United States of America," *Microsoft® Encarta® 98 Encyclopedia*. CD-ROM Microsoft Corporation, 1998 ed.; see Bell, *supra* note 31, at 94. In response to U.S. passage of the 1992 Democracy Act, Canada and the United Kingdom sent communiqués to high-ranking U.S. government officials threatening retaliatory measures. The U.K. responded with threats of invoking the Protection of Trading Interests Act, which would "forbid [] compliance by British citizens and businesses with orders of foreign authorities, where those orders have extra-territorial effect and prejudice British trading interests." *Id.* at 95. In the Canadian response, "Canadian Attorney General Kim Campbell issued an order barring Canadian corporations from complying with U.S. measures precluding subsidiary trade,

from trading partners, President Clinton cleverly exercised a provision of the *Libertad* Act and suspended the right for U.S. citizens to sue shortly after signing the law into effect.³⁹ The suspension continues in effect to this day.⁴⁰

The *Libertad* Act contains four major provisions, each respectively titled as follows:

Subchapter Title I — Strengthening International Sanctions Against the Castro Government.⁴¹ Title I makes a declaration of policy that the United States government, by and through the Office of the President of the United States, shall seek and promote the institution and preservation of an international trade embargo on Cuba. The President shall promote this policy through United States Representatives at the United Nations. Furthermore, Title I makes it very clear that the United States will not tolerate any completion or operation of nuclear facilities in Cuba. Failure to observe this warning will be considered an act of aggression toward the United States.

Subchapter Title II — Assistance to a Free and Independent Cuba.⁴² Title II is intended to be a an official and formal declaration by the United States government to support, recognize, encourage and establish solidarity with the Cuban people's efforts for self-determination. Title II essentially outlines a policy for promoting the efforts of a transition government in Cuba.

Subchapter Title III — Protection of Property Rights of U.S. Nationals.⁴³ Title III makes it unlawful for U.S. nationals, businesses, and institutions to engage in business associations, or trafficking goods, related to confiscated U.S.-owned property in Cuba.

Subchapter Title IV — Exclusion of Certain Aliens.⁴⁴ Title IV serves as a directive to the Attorney General to deny visas and exclude entry to the United States any alien known to have confiscated, directed, or overseen the confiscation of property claimed by a United States national. The exclusion extends to any corporate officer, principal, or shareholder with a controlling interest of an entity connected with trafficking in confiscated property.

and required companies to report any directives relating to such measures to the Canadian Attorney General. The Foreign Affairs Minister of Canada, Joe Clark, sent a message to James Baker declaring that Canada considered the Mack Amendment 'an intrusion into Canadian sovereignty.'"

Id.

39. *President Clinton Statement on Helms Burton*, *infra* note 50; see also 22 U.S.C. § 6064(b) (West, WESTLAW through 1996 legislation).

40. See *Text of Clinton Letter on International Relations and Appropriations*, U.S. NEWSWIRE, Jan. 15, 2000, available at 2000 WL 4140365:

Pursuant to section 306(c)(2) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114), (the "Act"), I hereby determine and report to the Congress that suspension for 6 months beyond February 1, 2000, of the right to bring an action under Title III of the Act is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

Sincerely,

WILLIAM J. CLINTON

41. Cuban Liberty and Democratic Solidarity Act (LIBERTAD Act) 22 U.S.C. §§ 6031- 6036 (1996).

42. 22 U.S.C. §§ 6061- 6067 (1996).

43. 22 U.S.C. §§ 6081- 6085 (1996).

44. 22 U.S.C. § 6091 (1996).

Subchapter Title III is the most controversial provision in the Act. Title III purports to create a cause of action against foreign citizens and companies who currently own, manage, or use properties that were confiscated by the Cuban government from people who are now U.S. nationals. These foreign citizens and firms face liability in U.S. courts if they knowingly and intentionally traffic in property expropriated by the Cuban government without the consent of the U.S. national that previously owned the property. Furthermore, the Act has the potential to open U.S. courts to a flood of litigation by creating a new class of plaintiffs, including those originally entitled to relief under the Foreign Claims Settlement Act⁴⁵ and those native Cubans who have become Americans since their arrival to the United States.

Libertad defines the term "trafficking" very broadly to include the sale, transfer, brokerage, or possession of any property to which a U.S. citizen had a claim. Furthermore, *Libertad* codifies all previous trade restrictions against Cuba that were in existence as of March 1, 1996, thus making it impossible for presidents alone to modify or repeal existing U.S. policies toward Cuba.⁴⁶ *Libertad* therefore dramatically widens the scope of the U.S. embargo on trade with Cuba.

The purposeful extraterritorial reach of *Libertad* is problematic. U.S. trading partners claim that the *Libertad* Act violates their sovereignty by exposing their citizens to the extraterritorial application of American law.⁴⁷ The United States' imposition of *Libertad* penalties on Cuba's trading partners results in a classic secondary boycott. Unfortunately, the implications of this secondary boycott are more complicated. At first glance, it comes as no surprise that the trading partners of the United States do not take kindly to the exposure of their nationals and companies to litigation. Therefore, in response to U.S. legislation, the European Union, Canada, Mexico, and other trading partners of the United States protested the Act and announced countermeasures ready to be implemented once the Act took effect.⁴⁸ As noted above, the *Libertad* Act was signed into law in March 1996. As such, its provisions are official policy of the United States. However, because President Clinton has not lifted the ban on permitting lawsuits under the Act, there has not been any litigation to test the validity of the Act before a court of law; equally, the countermeasures by our trading partners are also on hold.⁴⁹ President Clinton has remarked on this matter by saying, "[I will] continue to exercise [my] privilege to defer the Act as long as U.S. allies continue to work toward a democratic Cuba."⁵⁰ The president's comment can

45. See 22 U.S.C. § 1643 (1990).

46. The Helms-Burton law effectively neuters the president's ability to dictate and control foreign policy, as is supposed to be the case according to the United States Constitution.

47. See generally UN: As Assembly Calls for End to 'Extraterritorial Measures,' Cuba Announces \$100bn Suit against US, M2 PRESSWIRE, Nov. 11, 1999, available at 1999 WL 24367606 (indicating that a collage of nations and U.S. trading partners made known their distaste and countermeasures to the extraterritorial effects of the Helms-Burton law) [hereinafter UN].

48. Bell, *supra* note 31.

49. See UN, *supra* note 47.

50. President Clinton Statement on Helms Burton, U.S. NEWSWIRE, Jan. 3, 1997, ¶ 6, LEXIS, News Library, News Group. See 22 U.S.C. § 6064 (West, WESTLAW through 1996 legislation), which states in pertinent part:

§ 6064—Termination of the economic embargo of Cuba

(a) Presidential actions

Upon submitting a determination to the appropriate congressional committees

be interpreted several ways: is it merely Clintonesque double-speak in an attempt to avoid international and legal repercussions from the potentially explosive and unenforceable nature of Title III? Or is he exercising a brave act in defiance of Senator Jesse Helms by not permitting the most powerful provision of the *Libertad* Act to be acted upon? Regardless of the president's reasons, foreign trading partners are taking appropriate steps to counterattack the effects of Title III and have put into place the political mechanisms to handle possible *Libertad* Act lawsuits.⁵¹

V. A Pragmatic Look at U.S. Policy Toward Cuba.

U.S. policy toward Cuba should not center on Fidel Castro. It should, and in fact does, transcend him. For example, Title II of the *Libertad* Act provides automatic aid to a transition government in Cuba and a suspension of the embargo.⁵² By promulgating such a policy, the United States is de-emphasizing the negativity of its policy (the embargo against the totalitarian government) and is highlighting the positive aspects (aid to a future government).

The combination of these two tracks of U.S. policy toward Cuba will be used to entice Castro's successor(s) to accept democratic reforms. Unlike Castro, the next generation of Cuban leaders may not feel inextricably tied to the history of the Cuban revolution since they were not part of it in the beginning. Hence, it will be easy for them to abandon the failed system that currently exists and embrace virtual prosperity. Like the

under § 6063(c)(1) of this title that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 6082 of this title with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) Suspension of certain provisions of law

In carrying out subsection (a) of this section, the President may suspend the enforcement of—

(1) § 620(a) of the Foreign Assistance Act of 1961, 22 U.S.C. § 2370(a);

(2) § 620(f) of the Foreign Assistance Act of 1961, 22 U.S.C. § 2370(f), with respect to the "Republic of Cuba;"

(3) §§ 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992, 22 U.S.C. § 6003, 6004(d), and § 6005;

(4) § 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

51. See David Fox, REUTER EUROPEAN COMMUNITY REPORT, EU Widens Retaliation to U.S. Trade Measures (1996), available in LEXIS, News Library, REVEC File. Canada is set on amending the Foreign Extraterritorial Measures Act (FEMA), R.S.C. F-29 (1984). As it exists today, FEMA allows the Canadian Government to block the extraterritorial application of foreign legislation or trading directives that adversely affect Canadian trading interests or infringe on Canadian sovereignty. *Id.* The proposed amendments will block the enforcement of any judgments and awards obtained pursuant to *Libertad* and establish a "clawback" provision that allows a Canadian individual or corporation to sue in Canada for recovery of excessive foreign judgments. *Id.*
 52. See 22 U.S.C. §§ 6062, 6064 (Supp. II 1996).
-

Soviets during Nazi aggression, in the face of hardship, the new Cuban leaders will abandon Communist ideology and accept pragmatism.⁵³

New Cuban leaders will have incentive to change Cuban internal policies, to shift away from Communist ideology, and to adopt a new economic system. The current economic system in Cuba needs revision. Since losing Soviet subsidies in 1991, the Cuban economy has been struggling to re-stabilize. A review of the Cuban economy since 1991 demonstrates a trend of enormous setbacks and painstakingly slow recovery. The Cuban economy only grew one percent in 1998,⁵⁴ after having declined more than sixty percent between 1991 and 1996.⁵⁵ An example of a serious setback was the 1997-1998 sugar harvest (an important part of the Cuban economy), which was the worst in over fifty years.⁵⁶ Nevertheless, forecasters estimate 3.3 percent growth in the economy for 1999, which is a substantial improvement over 1998.⁵⁷ *The Economist*, a well-respected British publication, reports that "[p]rovided these trends hold, and export diversification and import substitution continue, growth should reach 5% by 2000."⁵⁸ What these statistics should communicate to leaders in Cuba and abroad is that if a Cuban workforce can thrive under its current conditions, imagine what it could do with a new entrepreneurial-friendly economic system.

Cuban economic prosperity is on the horizon. It is estimated that if the U.S. embargo on Cuba is lifted, U.S. exports to the island would be between \$1.3 billion to \$2 billion the first year and \$6.5 billion each subsequent year (see Illustration #1).⁵⁹

Lifting the embargo will mean the return of American companies that have claims to property in Cuba, which is arguably the most problematic issue at the center of the embargo policy. The solution to this complex issue need not be so difficult. Companies that had their property seized may take one of three options. First, they can let bygones be bygones, and move forward to new investments in Cuba. Economic and political reality make this option a virtual impossibility, nevertheless, it is an available option.

Second, the United States and the Cuban government could agree to make reparations to affected companies from Cuban accounts frozen in the United States. Foreign governments currently administering frozen Cuban accounts would also be free to make similar arrangements. For this option to work, interested companies must be willing to accept a compromise in the value of restitution that they are demanding from the Cuban government. In essence, any agreement for compensation of seized properties resolved from seized Cuban accounts has to leave both parties with the ability to save face. At the

53. See generally Manuel David Orrio, *Comunistas Cubanos Bautizan Hijos "En Secreto"* [Cuban Communists Baptize their Children "secretly"], INDEP. JOURNALISTS COOP., Mar. 26, 1999, available at <http://www.cubanet.org/CNews/y99/mar99/26a3.htm> (commenting that although the Cuban constitution does not prohibit religious worshipping, Communist militants are afraid they will lose their power within the Party if they openly worship).

54. See *Cuba Country Report*, *supra* note 33, at ¶ 3.

55. See 22 U.S.C. § 6021(1) (Supp. II 1996).

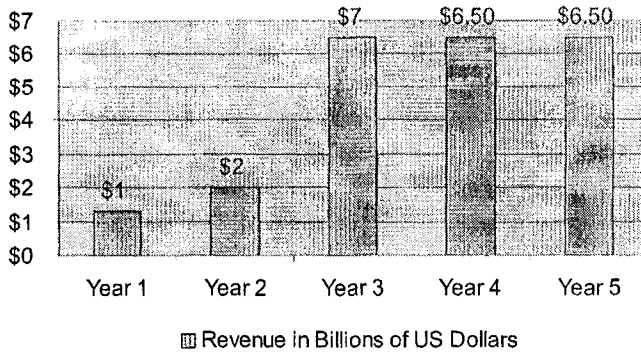
56. See *Cuba Country Report*, *supra* note 33, at ¶ 3.

57. *Business Outlook in Cuba*, *infra* note 63, at ¶ 5.

58. *Id.*

59. Shelley Emling, *Flirtation With Capitalism Fizzles: Socialist Cuba Puts Cold Shower On its Experiments with Free-Market Reform*, AUSTIN AMERICAN-STATESMAN, Jan. 24, 1999, at J1, available at 1999 WL 7400128.

Projected US exports to Cuba if the embargo were lifted.



end of the day, the Cuban government and the victim companies must leave with something to show for their efforts.

Third, as a condition to lifting the embargo, the Cuban government could permit expropriated companies to regain title and control of properties. The reappropriating process would require planning with the same care as is used when nations privatize state-owned entities. Pitfalls to avoid are unnecessary lapses in time between handovers from state-owned to private-owned entities, detrimental gaps in management, and draconian changes in management policy and personnel. Clearly, as private companies regain control of properties, they will most certainly invest large amounts of money to upgrade the property and related infrastructure. In turn, an astute Cuban government will raise revenue from reasonable taxes and acquire seed revenue from released assets in foreign banks. Revenue from formerly seized assets should be used to build, improve, and maintain infrastructure. Collectively, foreign investments and responsible Cuban fiscal policy will fuel a favorable trickle-down effect and create more jobs for Cubans by injecting the economy with large quantities of capital.

VI. Reaffirmation of Reasons for Lifting the Embargo.

A. OPPONENTS OF THE EMBARGO.

Opponents of the U.S. trade embargo point out that crippling the Cuban economy is only bringing great suffering to the Cuban people, not weakening Fidel Castro. They believe that the United States is acting inhumanely by denying people basic essentials like food and medicine. An assortment of political and human rights groups in the United States and abroad hold this position. The leading organizations include human rights groups such as Amnesty International and Human Rights Watch. Groups also exist within the Cuban community such as the Cuban Committee for Democracy. In fact, almost

every nation in the world agrees that the embargo is ineffective and should be lifted—a sentiment that has been echoed in speeches at the United Nations for eight years.⁶⁰

B. KEY ARGUMENTS OF THE OPPONENTS OF THE EMBARGO.

Opponents of the embargo argue that the embargo provides Castro with a scapegoat, allowing him to blame any economic hardships on the American blockade. This principle works in two ways: first, it provides a scapegoat if the economy is bad; and second, it allows Castro to relate any economic progress to the virtues of the socialist model. Opponents hold that lifting the embargo would remove the available excuses Castro utilizes to quell internal opposition. Opponents also argue that in other places around the world communism was defeated not by isolation, but by engagement. True to this claim, the United States has used an engagement approach that has resulted in democracy in Russia, and freer markets in China. Therefore, isolating Cuba will only cause a prolonged transition to democracy.

According to recent opponent-led studies, health care in Cuba has declined considerably from 1990 to 1998, and women and children have been affected the most. Opponents argue that U.S. policy toward Cuba is creating rifts in its relationships with countries around the world. The United States is the only country in the world that observes the embargo, and the policy has slowed progress toward freer international trade by subverting laws firmly established in the World Trade Organization (WTO) charter. In summation, opponents of the embargo argue that the United States should learn from its successful engagement with Eastern Europe communist regimes and their eventual collapse. The collapse they would argue can be attributed to a penetration of people, ideas, and commerce—not from isolation.

Those that favor lifting the embargo unconditionally give three primary reasons for doing so. First, unilaterally lifting the embargo would permit capitalism to spread rapidly throughout Cuba and create economic freedom, as it has in China. Secondly, trade and U.S. investment would bring political freedom to the island. Finally, business leaders point to the very honest fact that the embargo is causing U.S. businesses to lose market share in Cuba to the Europeans and Canadians. Below, Illustration #2 depicts the amount of capital that foreign countries are presently investing in Cuba. More importantly, it represents the lead that foreign business interests already have over U.S.-based business interests.

Commentaries from a business executive in Cuba are representative of what the business community at large is feeling.⁶¹ A senior-level executive of a non-U.S.-based company that has commercial dealings within the Republic of Cuba reported the following observations:

1994 was the year in which the Cuban economy bottomed-out. Today, Cuban managers, and especially the negotiators, are much more confident. They do not seem to need or want foreign investment with the same level of urgency

60. *UN General Assembly Condemns US Embargo Against Cuba for Eighth Year*, AGENCE FRANCE-PRESSE, Nov. 9, 1999, ¶ 1, available at 1999 WL 25141049. For the past eight years, the United Nations has issued a non-binding resolution calling for an end to the embargo. There were 155 votes in favor, eight abstentions and two votes against—the United States and Israel were the only two nations voting against the resolution.

61. *Business Outlook in Cuba*, *infra* note 63.

as they did four years ago. . . . One year ago, Cuban negotiators would have calculators, pads, pencils, and one telephone for ten people. Today, they have computers, access to the Internet, and cellular telephones. . . . Virtually every foreign company operating in Cuba today, or seeking to operate in Cuba today, is doing so because of a feeling that normalized relations between Cuba and the United States are near and a venture that may not be immediately profitable, or as profitable as expected, will have sizable returns once Cuba and the United States relations are normalized.⁶²

According to statistics published by the Latin American Business Report of the Economist Intelligence Unit (EIU), there is an expected flow of foreign direct investment into Cuba of \$600 million in 1999 and \$700 million in 2000.⁶³

1. *Foreign Investment in Cuba is Growing at a Feverish Pace and the United States is Being Left Behind.*

"The following figures represent the overall amounts of announced, committed, and delivered investments since 1990 by private sector companies and government-controlled companies from various countries to enterprises within the Republic of Cuba as of 20 March 1999."⁶⁴ Due to the unavailability of trade information from the Cuban government, the U.S.-Cuba Trade and Economic Council compiled the following information through the media, other public sources, and individual discussions with company representatives, non-Republic of Cuba government officials, and Republic of Cuba-based enterprise managers and government officials.⁶⁵ The figures glaringly represent how rapidly and decisively business entities from across the globe are making positive steps toward trade with Cuba.⁶⁶

62. *Observations from a Business Executive*, ECON. EYE ON CUBA, U.S.-CUBA TRADE AND ECON. COUNCIL, INC., available at <http://www.cubatrade.org/eyeonq.html#2> (last visited Dec. 5, 1999).

63. *See Business Outlook in Cuba*, BUS. LATIN AM., THE ECONOMIST INTELLIGENCE UNIT LTD., July 12, 1999, available at 1999 WL 10528892. This article basically states the obvious fact that in present day American politics, Cuba will remain off-limits to U.S. business. "An easing of some U.S. restrictions relates mostly to remittances and travel by Cuban-Americans and other authorized individuals. They do not affect trade and investment prohibitions under the 38-year-old embargo and the Helms-Burton Act of 1996. Despite growing pressure from the business community to alter U.S. policy, this is unlikely any time soon as the 2000 presidential election will obstruct any discussion on the matter."

64. *See infra* note 65.

65. *See Foreign Investment and Cuba*, U.S.-CUBA TRADE AND ECON. COUNCIL, INC., available at <http://www.cubatrade.org/foreign.html> (last visited Dec. 5, 1999) [hereinafter *Foreign Investment*]. The U.S.-Cuba Trade and Economic Council's purpose is to provide an efficient and sustainable educational structure in which the U.S. business community may access accurate, consistent, and timely information and analysis on matters and issues of interest regarding U.S.-Republic of Cuba commercial, economic, and political relations. The U.S.-Cuba Trade and Economic Council does not take a position with respect to U.S.-Republic of Cuba political relations. For additional information on related statistics, the Council can be contacted at: 30 Rockefeller Plaza, New York, New York 10112-0002, Telephone (212) 246-1444, Facsimile (212) 246-2345, Internet: <http://www.cubatrade.org>.

66. The Cuban government does not release trade related information for fear that any information, regardless of its negative or positive nature, will be used by anti-Castro organizations to undermine the Cuban government.

"On 15 March 1999, the United States Department of State in Washington, D.C., reported that an estimated total of US\$1.7 billion had been invested in the Republic of Cuba since 1990. The largest sectors receiving foreign investment were reported to be: Telecommunications with US\$650 million; Mining with US\$350 million; and Tourism with US\$200 million."⁶⁷

FOREIGN INVESTMENT IN CUBA SINCE 1990⁶⁸

<i>Country</i>	<i>Announced US\$</i>	<i>Committed/Delivered US\$</i>
Australia	500,000,000.00	
Austria	500,000.00	100,000.00
Brazil	150,000,000.00	20,000,000.00
Canada	1,807,000,000.00	600,000,000.00*
Chile	69,000,000.00	30,000,000.00
China	10,000,000.00	5,000,000.00
Dominican Republic	5,000,000.00	1,000,000.00
France	100,000,000.00	50,000,000.00
Germany	10,000,000.00	2,000,000.00
Greece	2,000,000.00	500,000.00
Honduras	7,000,000.00	1,000,000.00
Israel	22,000,000.00	7,000,000.00
Italy	397,000,000.00	387,000,000.00
Jamaica	2,000,000.00	1,000,000.00
Japan	2,000,000.00	500,000.00
Mexico	1,806,000,000.00	450,000,000.00
The Netherlands	300,000,000.00	40,000,000.00
Panama	2,000,000.00	500,000.00
Portugal	15,000,000.00	10,000,000.00
Russian Federation	25,000,000.00	2,000,000.00
South Africa	400,000,000.00	5,000,000.00
Spain	350,000,000.00	100,300,000.00
Sweden	10,000,000.00	1,000,000.00
United Kingdom	75,000,000.00	50,000,000.00
Uruguay	500,000.00	300,000.00
Venezuela	50,000,000.00	3,000,000.00
TOTAL	US\$6,119,000,000.00	US\$1,767,200,000.00

67. *Foreign Investment*, *supra* note 65.

68. *Id.*

H.E. Keith Christie, Ambassador of Canada to the Republic of Cuba, reported that Canada-based companies had delivered materials and capital investments totaling approximately U.S.\$200 million within the Republic of Cuba by the end of June 1998. According to Ambassador Christie, Canada plans to increase its investments in Cuba five-fold to U.S.\$1 billion by the year 2000.⁶⁹

Canada is not alone in its efforts to normalize trade relations with Cuba; the numbers above reflect the cold stark reality of world trade. The world community is not sitting idly by and letting the Cuban market go untouched. In a world economy where the early bird, or more appropriately the smart bird gets the worm, those that invest in Cuba are the embodiment of the proverbial 'smart bird.'

There was a time not so long ago when only certain nations with the ability and luxury to exercise free decision-making could protect the actions of their businessmen. Twenty years ago, few nations would break ranks with the United States and permit their countrymen to brazenly engage in trade with Cuba. For that matter, many businessmen would not have felt comfortable investing capital in Cuban industry; this, however, is not the case anymore. The Communist red scare is behind us; geo-political alignments are a matter of the past, and 'free market trading' is now the preferred topic of discussion at business meetings and political tea parties.

Since the Communist ideal folded in the Soviet Union and Cuba lost its subsidy, the Cuban government has made great efforts to reform its economic system and provide investors guarantees on their investments and capital. The Helms-Burton legislation appears quite vicious and rabid, and in many ways it is for U.S. based investors, but for investors abroad it is having little or no consequence. In fact, if the U.S. government [specifically, the President of the United States] lifts the ban on Title III lawsuits, there are enough counter-measure provisions in parliaments across the globe that the U.S. may find itself in a precariously difficult position. When businessmen and women from countries like Honduras and Jamaica that are so dependent on U.S. economic aid don't feel intimidated by potentially crippling punitive legislation like the Helms-Burton law, it means that a new era is dawning in world economic norms.⁷⁰

Below, Illustration #3 shows how the Cuban economy is slowly becoming one of consumption, developing a taste for foreign goods. While a lopsided import-export deficit is not necessarily good for an economy, the dynamic in Cuba is one of positive outlooks. The Cuban workforce is skilled and capable; with a lessening of trade restrictions, manufacturing forms could quickly move in and set up factories. The golden key to a strong economic posture is the ability to manufacture and export durable goods; Cuba is in the catbird seat to do just that. Cuba, like Mexico, is sitting at the doorstep of the world's largest consumption economy, the United States. Unlike Mexico, a very large segment of Cuba's workforce is skilled and literate.⁷¹

The existence of foreign goods in an economy that was previously avoided like the plague is a sign that foreign investors are courting Cuba and that Cubans are responding

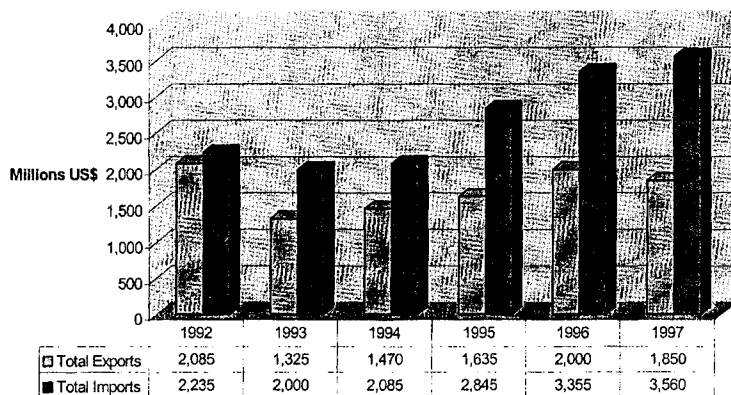
69. See *Caribbean Update*, INFO. ACCESS CO., Aug. 1, 1998, ¶ 2, available at 1998 WL 8149637.

70. See *Foreign Investment*, *supra* note 65. Honduran interests have announced a commitment of \$7 million toward investments in Cuba in 2000. Jamaican interests have announced a commitment of \$2 million in 2000.

71. See *Cuba's Domestic Market Grows With Tourism*, *supra* note 28.

favorably. More importantly, these foreign goods show an increase in the buying power of the Cuban consumer, a critical element in the cycle of development. Granted, kudos must be given where due; it would be neglectful not to recognize the fact that increased Cuban consumer buying power is in part a result of the U.S. government loosening restrictions on exiles sending dollars home. Nevertheless, this precise and stark reality should be exploited. If the embargo were lifted, more capital would flow into Cuba; the Cuban people would feel the benefits of capitalism and eventually demand that their government make appropriate changes to facilitate further economic growth. Lifting the embargo would give Castro precisely what he fears most; it would empower his people to demand change.

Distribution of Cuban Trade from 1992-1997⁷²



2. The Cuba-China Comparison and the Basis for Unequal Treatment.

One contemporary proposal for restoring economic relations with Cuba is to set up a system modeled after the U.S.-China relationship. Unfortunately, it is not that easy because the dynamics of the U.S.-Cuba relationship are not nearly the same as those of the U.S.-China relationship. The Chinese model is one fundamentally structured on a priority system of trade over politics, whereas in the Cuba model, politics and emotion are superior to trade. During the Cold War, it was in the best interest of the United States to pursue increased trade with China. Capitalizing on the less-than-friendly relationship between China and the Soviet Union, the United States made a political gamble that the Chinese would snub the Soviets in favor of the American dollar; debatably, one can say the gamble remains a success and it is paying off quite handsomely. With the Cold War in the history books, pure business interests are now driving U.S.-Sino relations,⁷³ while in Cuba, U.S. business interests are subordinated to four decades of politically paralyzing emotional and ideological agendas.

72. See *Cuba Handbook of Trade Statistics: Central Intelligence Agency, Directorate of Intelligence*, at http://www.cia.gov/cia/di/products/cuba_hbk98/cubahandbook.xls (last visited Jan. 27, 2000).

73. See generally Myriam Marquez, *Get Real – Ending U.S. Embargo Won't Help Cuban People*, ORLANDO SENTINEL, July 28, 1999, at A14, available at 1999 WL 2823477.

The following example of political hypocrisy illustrates the dual standard given to U.S.-Sino and U.S.-Cuba relations. During a 1999 visit to Beijing, U.S. Secretary of State Madeleine Albright was asked about Washington's willingness to overlook China's human rights record. Albright replied: "We determined some time ago that it was not a good idea to link human rights and trade, and that we actually make better progress in both when they are not linked."⁷⁴ While the United States is applying its double standard, the rest of the trading community is practicing what Ms. Albright preached. Cuba is building a healthy trading relationship with nations in Europe, Latin America, Asia, and Canada.⁷⁵

Proponents of the embargo argue that it is simply unfounded to assume that by applying a China-style model of economic agreements there would be results in Cuba that would compare to the current economic success of China. At first glance, their argument has some merit; recent studies show that free trade is having an impact on Chinese society and the communist system.⁷⁶ According to John Sweeney of the Heritage Foundation, a strong domestic free-market is destroying communism in China.⁷⁷ The emergence of millions of small entrepreneurs in China is resulting in the creation and shaping of a trade based market economy.⁷⁸ Unlike in China, the Cuban government has refused to allow Cuban individuals to participate in an extensive free market, therefore eliminating the opportunity for the emergence and growth of any sort of entrepreneur class. Fortunately, the Cuban people are aware of this distinction in basic internal trade policy, and at the University of Havana where an MBA program was launched in the last few years, an MBA student complained, "I am studying about investing capital when Cubans cannot invest in Cuba. If you are a foreigner abroad, you can invest. But if you are a Cuban, no."⁷⁹

An example of Cuban efforts toward an improved internal economic policy is the governments' 1994 decree permitting legalized farmers' markets.⁸⁰ In these markets, Cuban vendors and consumers can buy hens, rice, beans, onions, and other produce at market prices.⁸¹ Unlike the state stores, the money made at these markets goes to its free-

74. Chris McGillion & Morris Morley, *Uncle Sam, Why Won't You Salsa?*, SYDNEY MORNING HERALD, para. 29, Jan. 22, 2000, available at 2000 WL 2308642.

75. See *id.* at para. 28.

76. See Sweeney, *supra* note 13.

77. See *id.*

78. *Id.*

79. Gail DeGeorge, *A Touch of Capitalism: Castro Tries to Keep the Wolf at Bay through Careful Injections of Private Enterprise*, BUS. WK., Mar. 17, 1997, at 50, available at http://www.lexis.com/resea...z&_md5=957b5fc7ce9342259aede57b19edf16b. See also Martin Diaz Martinez, *Discutamos a la Luz [Let Us Discuss in the Light]* (Mar. 11, 1999), <http://www.cubonet.org/CNews/y99/mar99/11a5.htm> (stating that Cuba is only country in the Western Hemisphere that prohibits its citizens from investing in the country).

80. See generally *Food Markets Move Cuba Closer to the Free Market*, ORLANDO SENTINEL, Oct. 8, 1994, at A16, available at 1994 WL 4921096. On Saturday, September 17, 1999, the Cuban government issued a decree permitting agricultural producers to sell excess production directly to consumers. The Decree allows the use of government vehicles to carry private produce, so long as they have completed their state tasks—and stipulates that they cannot vary from their routes. The markets permit farmers to sell products to Cubans at rates far below black market prices.

81. See Susan Hurlich, *Letter from Havana: Capitalist Ways: Cubans Dabble in Free-Enterprise Markets*, MACLEAN'S, Aug. 21, 1995, at 22, available at 1995 WL 4204956.

enterprise vendors.⁸² The farmers' markets are a wonderful experiment in capitalism; however, the Castro government has put in place onerous restrictions that are stamping out the emerging fledgling entrepreneurial spirit.⁸³ The onerous restrictions are due "partly to the [1998 & 1999] financial meltdowns in Asia and elsewhere, which Castro points to as proof that Cuba's socialism remains the best model after all."⁸⁴

In an effort to preserve the Communist ideal, the Cuban government has discouraged independent farming. If a farmer decides not to work for either a state farm or a government-sanctioned cooperative, he or she must sell up to eighty percent of the harvest to the state at a fixed price.⁸⁵ These prices are much lower than the market value. A case in point, farmers sell forty-five kilograms of mangoes to the state for seven pesos, while the state sells the same quantity for fifty pesos.⁸⁶

If the farmers fail to meet their contractual obligation with the government, the state slaps them with stiff fines.⁸⁷ Furthermore, independent farmers are not allowed to free themselves from their duty to the government. For example, in May 5, 1997, several peasant families formed a work cooperative named Transición (transition).⁸⁸ They declared that they would no longer do business with the government and would decide for themselves to whom they would sell.⁸⁹ A week later the government fined each family 500 pesos (three months worth of income) for "improperly using the land."⁹⁰ Hence, although farmers' markets exist in Cuba, the money made by the farmers does not fully compensate for the money they lose for selling to the state at below-market prices. Moreover, Cuba expert Pamela Faulk from City University of New York reveals that the Cuban government takes a high percentage (as high as twenty to thirty percent) of the money made at the farmers' markets through taxes and related fees.⁹¹

The following is the text of an impassioned statement delivered on May 7, 1999, by Congressman Lincoln Diaz-Balart (R-Fl.) before the Trade Subcommittee of the House of Representative's Ways and Means Committee discussing the U.S. trade embargo against Cuba and why the China model is an inadequate example for justifying a lifting of the embargo. Congressman Balart highlights some very insightful and astute facts regarding why the Cuba dynamic cannot be treated with the same policies as those used with China:

82. See *id.*

83. *Id.* Shelley Emling, *Little Free Market Activity Sneaking Into Cuban Life*, THE COM. APPEAL MEMPHIS, TENN., Jan. 24, 1999, at A15, available at 1999 WL 4134841.

84. *Id.* at ¶ 6.

85. See David Abel, *Renegade Cuban Farmers Reap Harvest of Harassment*, GLOBE & MAIL, Jan. 19, 1999, at A14, available in WESTLAW 01/19/1999 Globemail A14.

86. See *id.*

87. See *id.*

88. See *id.*

89. See *id.*

90. *Id.* President Clinton, on January 5, 1999, authorized, inter alia, the sale of food and agricultural equipment to independent non-governmental entities, including private farmers. President William J. Clinton (Jan. 5, 1999), at http://www.state.gov/www/regions/wha/990105_clinton_cuba.html.

91. *All Things Considered* (NPR radio broadcast, Jan. 7, 1999), at <http://search.npr.org/cf/cmn/cmnpd01fm.cfm?PrgDate=1%2F7%2F1999&Prg1D=2>.

Despite the intensification of the campaign to save the tyranny, I feel more certain everyday that Cuba will be free. A national consensus in favor of multiparty democracy becomes apparent more clearly and more strongly every day in Cuba, and that consensus in favor of liberty contains within it a firm rejection of tyranny and oppression.

It is only a matter of time until the necessary dynamic is achieved that will permit the Cuban people to put an end to the tyranny and recover their sovereignty through free elections.

The tyranny is obviously preparing for the time when Castro will die. We can see clear signs of its intention to name someone like Alarcon or Lage as chief of state, probably with Raul Castro as head of the armed forces.

These maneuvers will be accompanied by offers to return previously-confiscated property to Americans, all for the purpose of Creating increasing pressure for Congress to lift the embargo in order to be able to establish and consolidate a fascist system in Cuba like the one that exists today in Mainland China (the "Chinese Model").

The Chinese Model in Cuba would mean a long-term consolidation of slavery for Cubans. We should always remember that capitalism is not synonymous with democracy or liberty; examples in this century abound (Mussolini, Hitler, Trujillo, etc.).

Capitalism, although without a doubt the most effective means of creating wealth, is perfectly compatible with oppression. It is also perfectly compatible with democracy and liberty, but the mere fact that capitalism exists does not guarantee the development of liberty or its consolidation.

Although it is clear that the establishment of a true Chinese Model will not be possible in Cuba during Fidel Castro's rule (since that system requires a certain decentralization of power and other characteristics that the tyrant will never permit), its establishment is theoretically possible when the tyrant dies. And the tyranny is preparing for its establishment.

With that purpose it will make tempting offers to international capitalism to try to again its support for the Chinese Model, a system which would permit the continuation of the conditions of misery, humiliation and oppression which Cubans face today. The decisive struggle of the Cuban people, therefore, will be to avoid the establishment of the Chinese political and economic model in Cuba after Fidel Castro's death and to achieve the return of sovereignty to the people through free elections.

It is essential to realize that establishment of the Chinese Model in Cuba is not possible as long as the American embargo exists. Without access to the American market, a Chinese Model permitting the consolidation of the slave system after the tyrant's death could never be created in Cuba.

Those who find themselves in power after the tyrant's death will need to achieve the lifting of the embargo, and the most important leverage available for the Cuban people at that time for the holding of free elections is, precisely, the U.S. embargo.⁹²

Therefore, unlike in China, there is no opportunity or infrastructure to encourage or support entrepreneurs making fortunes in Cuba's free market. The Castro government is not committed to market reform for the people, as is China.⁹³

Castro's commitment to trade is only one angle on the issue. The other more probable angle is what I term the "Cuba-China Economic Realism" angle. When talking about trade with China we are talking about trade and access to the world's most populous nation and the world's fifth most powerful economy. When contemplating trade with China, businessmen salivate at the mouth. The wealth that investors derive from Chinese ventures is almost intoxicating. Therefore, it is safe to say that the basis for the U.S. foreign trade policy with China is firmly grounded in economic reasoning.⁹⁴ Cuba, while certain to provide an economic bonanza for someone, is not as enticing a place of business as China. In short, the convenient purpose for establishing improved relations with China is rooted in purely economic self-interest. Meanwhile, the U.S. government has decided to value politics over trade with Cuba. One can surmise that from the perspective of U.S. foreign policy, the opportunity to do business with the world's fifth largest economy is just enough incentive to overlook human rights.⁹⁵

A study of our trading history with China does provide us with one lesson in our decision whether to lift the embargo on Cuba. The United States was able to trade with China and the Chinese people were able to prosper only *after* Mao Tse-tung, the father of the Chinese revolution, died. A fact that, if duplicated in Cuba, would require Mr. Castro to depart the earth. Unfortunately, that old revolutionary son-of-a-gun looks strong as ever and may be around for a long time to come. For those waiting for his departure, I hope they have something else to do in the meantime, because he is not leaving anytime soon.

3. *The Flow of Free Trade Results in the Flow of Free Ideas.*

Opponents of the embargo argue that free trade will automatically bring the free movement of ideas and capital to and throughout the island. That is a compelling argument that I subscribe to in a general and perfunctory manner. However, prudence dictates me to follow logic and thus admit that it is just not that simple.

The Castro government has opened the Cuban economy to the world in order to receive foreign investments while simultaneously isolating the Cuban people from the

92. Rep. Lincoln Diaz-Balart: *'Immoral capitalists' attack embargo*, CARIBBEAN TODAY, 5/31/98 ENWCBBN 9, ¶¶ 4-13, available at 1998 WL 11343108.

93. Sweeney, *supra* note 13. "The government of China has encouraged the marketization of the country's coastal provinces, and since 1992 the Chinese constitution has incorporated the concept of the 'socialist market economy.'"

94. *China's Trade*, THE FORT WORTH STAR TELEGRAM, Mar. 3, 1999, ¶¶ 3-5, available at 1999 WL 6221272. In this article, the author recognizes the unequal justification in establishing trading policies with Cuba. In a very apropos remark regarding the preference toward trading with China, the author notes, "[w]e loathe their politics, but we love their market share."

95. *See id.*

outside. It appears to be the goal of the Castro government to attract foreign investment and increase exports while at the same time preventing the Cuban people from benefiting from the opportunity. Although foreign employers can hire Cuban workers, the employers do not pay the workers directly. Rather, foreign companies pay state agencies in hard currency for the workers' labor, and the agencies, in turn, pay the workers about five percent of the original payment in Cuban pesos (even though stores do not accept pesos).⁹⁶ If the state agencies paid the workers any less, it would be slave labor, which the world community has outlawed. Furthermore, the government has discouraged self-employment by limiting the types of self-employed jobs allowed and by imposing high taxes on self-employed individuals.⁹⁷ Consequently, in 1998, the number of self-employed persons dropped by about one-fourth to less than 150,000.⁹⁸ Moreover, the private sector is virtually nonexistent since Cubans cannot employ other Cubans, except in the very limited case of family-run restaurants.⁹⁹ Mark Falcoff of the American Enterprise Institute observes that if Castro allowed the private sector to grow "he would, in effect, be willing the rebirth of Cuban civil society and, with it, the germs of pluralistic political order."¹⁰⁰

The Castro government does not allow Cuban citizens in hotels, in resorts, and on most beaches.¹⁰¹ The government strictly reserves these places for foreigners. Furthermore, tourists who pay in hard currency receive preference over Cuban citizens¹⁰² on the best restaurants, consumer goods, and quality medical services.¹⁰³ Since most Cubans make their income in Cuban pesos, the Castro government discriminates against them in all aspects of life.

On February 16, 1999, the National Assembly of People's Power¹⁰⁴ passed the Law for the Protection of Cuba's National Independence and Economy (*Ley de Protección a la Independencia Nacional y la Economía de Cuba*) (hereinafter Law 88), which imposes stiff criminal penalties of up to twenty years in prison for those convicted of being subversive to the Cuban government and spreading U.S. propaganda.¹⁰⁵ The purpose of this law is

96. See *Cuba Country Report*, *supra* note 33, ¶ 3.

97. *Id.*

98. *Id.*

99. See Mark Falcoff, *Is it Time to Rethink the Cuban Embargo?*, *LATIN AM. OUTLOOK*, Mar. 1998, available at <http://www.aei.org/lao/lao8875.htm>.

100. *Id.*

101. See *Cuba Country Report*, *supra* note 33, ¶ 3.

102. *Id.* The report terms this practice as "tourist apartheid."

103. See Martinez, *supra* note 78. The author, vice-president of the dissident group Cuban Committee of Peaceful Opponents, informs us that in the Cuban clinic Cira García, there is high-tech medical equipment for the express purpose of treating foreigners. See *id.* The high-tech medical equipment is limited to employees of the Interior Ministry at the CIMEC clinic, and to members of the Council of State at the Kouli clinic. See *id.* Incidentally, the Servimec and Cubanacán pharmacies only accept dollars for non-prescriptive medicines. See *id.*

104. See *id.* The National Assembly of People's Power, which has no contested elections, "rubber stamp[s] decisions and policies already decided by the Government." *Id.*

105. Gerardo Tena, *Cuban Dissidents Get Up to Five Years in Jail*, *AGENCE FRANCE-PRESSE*, Mar. 16, 1999, available at 1999 WL 2564483.

to silence the independent journalists on the island.¹⁰⁶ According to Claudia Márquez Linares of the independent Cuban journalists organization, *Grupo de Trabajo Decoro* [Honest Work Group], Law 88 is "evidence that in Cuba the law and rights are not united with justice nor human dignity, rather they respond exclusively to the interests of the socialist state . . . [trans.]"¹⁰⁷

Another example of the Castro government's intolerance for freedom of ideas is the detention of Vladimiro Roca, Felix Bonne, Rene Gomez, and Marta Beatriz Roque since July 16, 1997. The four were imprisoned for writing a pamphlet entitled *La Patria es de Todos* [The Homeland Belongs to All], which is a critical evaluation of the Elaborate Project Document with Visions to the Fifth Congress of the Cuban Communist Party.¹⁰⁸ The pamphlet, inter alia, states the group's opposition to the Party's interpretation of Cuban history, the Party's refusal to allow a multiparty system, and the government's failure to serve the interest of the people.¹⁰⁹

On March 15, 1999, after nineteen months in custody without due process, Roca was sentenced to five years in jail for sedition, Gomez and Bonne were sentenced to four years, and Roque was sentenced to three and a half years, with the sentencings creating outrage throughout the world.¹¹⁰ As a result, Canadian Prime Minister Jean Chretien vowed to review Canada's relations with Cuba.¹¹¹ A day after the sentencings, Canadian Foreign Minister Lloyd Axworthy doubted that Cuba was ready for reintegration into the Americas.¹¹² Furthermore, the European Union representative in Havana formally presented to the local chancellery the common concern of the fifteen members regarding the sentencing.¹¹³ Finally, the sentencings caused King Juan Carlos of Spain to postpone his planned trip to Cuba in the summer of 1999.¹¹⁴

106. See Claudia Márquez Linares, *Declaración de la Mesa de Reflexión de la Oposición Moderada* [Declaration of the Board on Reflections of the Moderate Opposition], Feb. 24, 1999, <http://www.cubanet.org/CNews/y99/feb99/26a2.htm>. The Board announced that Law 88 reinforces institutional violence against peaceful protestors that exercise their civil liberties; see also Cuba Press et al., *Carta Abierta* [Open Letter], Feb. 19, 1999, <http://www.cubanet.org/CNews/y99/feb99/19a6.htm>. Several groups of independent journalists in Cuba write to the world's democratic institution to support not allowing Law 88 to suppress the independent voices in Cuba.

107. Claudia Márquez Linares, *En un solo pie* [On Only One Foot], Mar. 30, 1999, <http://www.cubanet.org/CNews/y99/mar99/30a2.htm>.

108. Vladimiro Roca et al., *La Patria es de Todos* [The Homeland Belongs to All], July 7, 1997, <http://www.cubanet.org/CNews/y97/jul97/07adoc1.htm>. See Reinaldo Cosano Alén, *La lección que ofrece el juicio de los Cuatro* [The Lesson Learned from the Trial of the Four], Mar. 5, 1999, <http://www.cubanet.org/CNews/y99/mar99/05a1.htm>. The author, a professor at the College of Pedagogy of Cuba and president of the Cuban Democratic Coalition, argues that it is absurd that Roca and company were arrested for criticizing a document that the government made public to be evaluated by the public.

109. See Roca, *supra* note 108.

110. See Tena, *supra* note 105.

111. See *id.*

112. *Canada May Get Tougher with Cuba*, SUN-SENTINEL, Mar. 17, 1999, at 29A.

113. Jesús Zuñiga, *Europa decidida a reanudar sanciones* [Europe Determined to Resume Sanctions], Mar. 17, 1999, <http://www.cubanet.org/CNews/y99/mar99/18a2.htm>.

114. Jesús Zuñiga, *Podría postergar el rey español su viaje a Cuba* [The King of Spain May Postpone his Trip to Cuba], Mar. 18, 1999, <http://www.cubanet.org/CNews/y99/mar99/18a5.htm>.

The most recent evidence of the Castro government isolating the Cuban people from foreign influence was the decision to exclude regular Cuban citizens from the March 28, 1999 baseball game between Cuban players and the Baltimore Orioles as well as the "Music Bridges Over Troubled Waters" concert, an exchange between American and Cuban artists.¹¹⁵ The government only gave tickets to the two events to members of the Communist Party and other related organizations.¹¹⁶ In a country where obsession over baseball is as intense as the world's craze for soccer, it is outrageous that Cuban citizens were not given an opportunity to obtain tickets to the baseball game.¹¹⁷ Furthermore, the Castro government only agreed to allow the profits of the baseball game to go to Catholic Relief Services, a Catholic charity in Cuba, on the express condition that the organizations *not* use the money to provide aid to the Cuban people.¹¹⁸

It appears that the intention of the Castro government, by opening up to the world, may be to strengthen the Party and not the people on the island. Nevertheless, lifting the U.S. embargo will over time, create an open society in Cuba. An open society should be the reason for eventually laying the embargo to rest and making affirmative strides toward a new policy. While other nations have renewed relations with Cuba through business contacts with the Castro government, which serves to strengthen the idea of capitalism by undermining the current regime that suppresses the people,¹¹⁹ U.S. relations with Cuba remain strictly regulated and guarded. What little economic assistance that makes its way from the United States to Cuba arrives primarily from personal gifts by Cuban exiles. Current U.S. policy is trying to achieve a change in government, however, all it is really doing is strengthening the resolve of the Cuban people and strengthening comrade-to-comrade contacts between exiles and their loved ones on the island. U.S. policy is not creating a counter-Castro movement.

A steady relaxation of trade policy with Cuba is the way to effect change in the Cuban government. The United States government allows its residents to send funds to independent organizations in Cuba and it allows limited contacts between academics, athletes, and other cultural exchanges between the two countries. Presently, the United States government permits the sale of food and medicines to independent non-governmental entities in Cuba.¹²⁰ Through these limited contacts, the United States is empowering the people of Cuba without increasing the strength of the totalitarian government. However, while the current policy is benevolent and helps those Cubans fortunate enough to receive assistance from relatives abroad, or to benefit from the cultural exchange, it is not enough to effectuate large-scale political change. Through a planned and structured easing of trade restrictions, the end-result will be an open Cuban society that can better exercise self-determination as well as benefit from an eventual complete lifting of the embargo.

115. Phil Davison, "Baseball Diplomacy" *Reaches Cuba*, INDEPENDENT, Mar. 29, 1999, at 13.

116. *Id.*

117. This was probably an attempt to avoid a repeat of the Pope's Mass in Havana, where the crowd began to chant "*libertad*" [freedom]. See generally *Cuba Country Report*, *supra* note 33.

118. *All Things Considered* (NPR radio broadcast, Jan. 7, 1999) [emphasis added].

119. See *Foreign Investment*, *supra* note 65. Illustration #2 of this article lists examples of nations that have committed to investing capital in Cuba.

120. The White House Office of the Press Secretary, *Statement by the President*, Jan. 5, 1999, http://www.state.gov/www/regions/wha/990105_clinton_cuba.html.

4. *Embargo Permanently Harms American Business.*

Opponents to the embargo in the United States argue that the embargo hurts American businesses by not being able to compete in Cuban markets.¹²¹ In the last few years, the Castro government has begun "joint ventures and foreign investment projects with Argentina, Australia, Brazil, Canada, France, Great Britain, Israel, Italy, Mexico, and Spain."¹²² Hence, many believe that the longer it takes to lift the embargo, the greater the competitive disadvantage American businesses will face in Cuba.¹²³

The proximity of the United States to Cuba is an advantage that American businesses have over their foreign competitors. It is quicker and cheaper to ship cargo from Havana to Miami, New Orleans, or Galveston, Texas, than it is to ship to Spain, Great Britain, or Argentina. This clear advantage will always exist. For example, with the short distance to travel and the wealth of the state, Texas could export petroleum products, cotton, pesticides, and other products to Cuba.¹²⁴ Moreover, it has been envisioned that Cuba and Florida could cooperate to become an economic powerhouse.¹²⁵ A conference between researchers from the Universities of Florida and Havana produced the conclusion that a "Florida-Cuba axis" would combine Florida's "capital and know-how with Cuba's under-used resources, skilled workers, tropical climate and Caribbean location."¹²⁶ Consequently, it can be assumed that once the embargo is lifted, whenever that may be, the United States will once again be Cuba's largest trading partner.¹²⁷

The investment capital and management abilities of the Cuban exile community in the United States will also ensure that the United States takes a prominent role in Cuban markets.¹²⁸ Surely, the hundreds of millions of dollars that exiles send each year to relatives and friends still on the island stand as testament that even after several decades there remains a strong commitment to the island.

The commitment to help those still in Cuba is not limited to goodwill from exiles. In January 1998, a group of business, government, and religious leaders announced the creation of a coalition to press for ending the U.S. ban on sales of food and medicine to Cuba. The group, called Americans for Humanitarian Trade With Cuba, includes: David Rockefeller, chairman of his family's trust; Archer Daniels Midland; chairman Dwayne Andreas; and former U.S. officials Carla Hills, President Reagan's trade representative; and Lloyd Bentsen, President Clinton's first Secretary of the Treasury.¹²⁹

121. See George W. McManus, Jr., *Cuba: A Land of New Horizons*, 8 EXPERIENCE 10, 13-14 (Summer 1998) (arguing that soon there will be "no piece of the Cuban pie" left for American businesses).

122. *Id.* at 13.

123. Lucien J. Dhooze, *Fiddling with Fidel: An Analysis of the Cuban Liberty and Democratic Solidarity Act of 1996*, 14 ARIZ. J. INT'L & COMP. L. 575, 628 (1997).

124. Shelley Emling, *Flirtation With Capitalism Fizzles: Socialist Cuba Puts Cold Shower On its Experiments with Free-Market Reform*, AUSTIN AMERICAN-STATESMAN, Jan. 24, 1999, at J1.

125. See William E. Gibson, *A Vision of Cooperation: Researchers Foresee Alliance between Cuba and Florida*, SUN-SENTINEL, Apr. 1, 1998, at 12A.

126. *Id.*

127. See Sweeney, *supra* note 13. Before the communist revolution, "nearly 80 percent of Cuba's two-way volume of trade involved the U.S." *Id.*

128. See *id.*

129. See James M. Cooper, *Creative Problem Solving and the Castro Conundrum*, 28 CAL. W. INT'L L.J. 391, 417 (1998) (in this piece the author examines and illustrates the failings of the embargo with Cuba).

Only days before Pope John Paul II traveled to Cuba, the coalition sought to portray the thirty-six-year U.S. trade embargo as inhumane and unworthy of U.S. ideals, calling it the harshest in the world. Upon arriving in Cuba, the Pope also criticized the trade ban, which raises Cuba's costs by forcing it to rely on more-distant exporters.

Working in conjunction with the U.S. Chamber of Commerce, the new group has vowed to press Congress to approve legislation to allow the direct sale of food and medicine. Such sales are banned under the Cuba embargo, although Americans may donate food and even sell licensed medical products through charity groups in Cuba.

Finally, once Cuba is free and the United States lifts the embargo, it will be easy for many U.S. businesses to reopen "shop" in Cuba since many of these companies have claims to property on the island. Examples of companies that held large properties in Cuba before the communist revolution are ITT, Texaco, and United Fruit Sugar (now owned by Chiquita Brands).¹³⁰ Even though the president has suspended its enforcement, Title III of the *Libertad* Act ensures that foreign companies will respect the claims by the U.S. companies.¹³¹ Even if companies cannot recover the actual property, they can make money by selling their claim to the property. Recently, there has been a great demand by investors for claims in Cuba. For example, NM Rothchild investment bank in London shops for claims of property in Cuba of \$50 million or more.¹³² With time, the claims that U.S. companies hold have increased in value. For example, the \$268 million property of Cuban Electric (now owned by Boise Cascade) in 1960 is now worth \$1 billion, and the North American Sugar's (owned by Borden) 1960 claim of \$97 million is now worth \$378 million.¹³³ Hence, even if some U.S. companies decide not to return to Cuba, they still stand to make a lot of money.

VII. Conclusion and Recommendations.

The United States should lift its embargo with the Cuban government so long as both the United States and the Cuban government can agree upon reasonable political concessions and time for an orderly economic transition is apportioned. Regardless of the pressure by the Cuban exile lobby, the United States should embark upon proactive policy and seek to remove the present day restrictions on doing business with the Cuban people. With four decades of history as testimony, the alternative to a proactive policy is the present status quo, which, despite the impassioned rhetoric of the Cuban exile leadership, has yielded no substantive change in the Cuban mode of government. The Cold War ideal of restricting business with a Communist government in the hope that somehow the government will change has yet to prove its merit.

In recent history, Iraq and Libya serve as testimonials to the already obvious fact. Embargoes do not work because they only hurt the impoverished. However, unrestricted foreign investment may serve as the catalyst that ignites and promotes the resurgence and empowerment of a free Cuban society.

130. James Cox & Christina Pino-Marina, *Regaining Seized Assets: Prospects Brighten for Collecting on Cuban Claims*, USA TODAY, Mar. 29, 1999, at 1B.

131. See 22 U.S.C. § 6082 (2000).

132. Cox & Pino-Marina, *supra* note 130, at 1B.

133. See *id.*

A. GRADUAL LIFTING OF THE EMBARGO.

While I promote a lifting of the embargo, I also caution that it should not be sudden. The United States should gradually permit increased social and business contacts with the Cuban people. A slow and orderly process will inject fresh ideas into Cuban society at a pace that will permit Cuban society to develop and grow without creating vacuums of economic or political power.

The premise for lifting the trade embargo on Cuba is based on how such a development would benefit American business interests meanwhile benefiting the Cuban people. I do not believe that the opening of Cuba to equilateral access to world markets can be conditioned to controls by extraneous institutions or organizations. The process of normalizing U.S.-Cuba relations must be subject to bilateral agreements between the Cuban government and the American private investment sector.

Indeed, as other countries disregard the embargo and trade openly with Cuba, the Cuban government will undoubtedly adopt pragmatic solutions to problems posed by the gradual emergence of a free enterprise system in Cuban society. However, I feel strongly that although the tightly controlled economy of a Communist system has demonstrably failed to satisfy the needs of the people, the Cuban government will nevertheless maintain tight controls on the economy. This, in my opinion, will occur if for no other reason than the fierce national pride nurtured by forty years of defiance to the hegemony of what they and many others in Latin America feel is an arrogant dominance by the United States. Cuba's relatively successful challenge to that perceived American "imperialism" has a degree of merit. The evidence is clear; in spite of a catastrophic shrinkage in the Cuban Gross Domestic Product resulting from the withdrawal of Soviet subsidies there is, nevertheless, evidence of economic recovery and growth resulting from international investments and commerce.

There is no doubt that there are some in the Cuban government today that are inclined towards more liberal economic policies, but I believe that they would be unwilling to surrender the gains and benefits of the revolution to a wave of uncontrolled business people anxious to take advantage of a ready work force. Although Castro's heirs in the revolutionary government may not be as committed as he is to the "Marxist-Leninist" philosophy, there is certain to be a fierce pride in the achievements of the revolution by the government and the people. It is cause of admiration by other Latin American nations who are presently struggling to overcome those very same conditions of class oppression and exploitation by a ruling elite and the resulting unequal distribution of wealth that motivated the Cuban revolution. Cubans will not be willing to sacrifice those gains. The Cuban people themselves on the island will not allow the clock of history to turn back; however, they are willing to work toward a new and more prosperous future.

The first step toward a more prosperous future for both the United States and Cuba may begin with the President of the United States and the Cuban government officially entering into discussions to explore the processes to normalize relations. This official commencement of discussions need not be complex or drawn out. The president could make a statement of his intention to begin an exploration of the process of normalizing trade over a designated period of time. Such a statement would not satisfy the require-

ments for lifting the Helms-Burton Law,¹³⁴ however, it would put the United States in a position to move pro-actively on political and trade related mechanisms for achieving a transition government in Cuba.

In this author's opinion, a twelve-year transition would be an adequate target period for achieving normalized relations.¹³⁵ During the twelve-year period there would need to be a pre-determined method by which both nations could agree to form an Advisory Commission whose mandate would be to monitor the effect of foreign investment and development on the island. The Commission's mandate could include promoting and facilitating policies furthering incremental increases in trade, cultural and political exchange. It would be the ultimate goal of the exploratory period that both nations work toward a point where the embargo would be lifted and bilateral free trade could be instituted at or near the end of period.

134. 22 U.S.C. § 6065 (2000). Requirements and factors for determining a transition government

(a) Requirements

For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

135. The precise period of time that a transition period would require is really a very speculative thing. As someone trained in economics and an advocate of political realism, I think it would suffice to say that a twenty-year period would be too long and a ten-year period too short.

B. MONITORING THE TRANSITION.

In order to effectuate and maintain objective oversight, the composition of the Advisory Commission must be balanced and free of political pressures. Ideally, the transition period would be administered by an independent Advisory Commission made up of three U.S. presidential appointees, three Cuban appointees and one United Nations appointee.

The makeup of the Commission should be diverse and balanced. U.S. presidential appointees should include one member¹³⁶ of the Cuban American National Foundation (CANF)¹³⁷ and one senior level officer of the U.S. Department of Commerce.¹³⁸ The third presidential appointee should be at the discretion of the president. U.S. appointees to the Commission would be officers of the executive branch, thereby not subjecting the appointment process to congressional approval and needless politicizing of what would be sure to be an already heavily scrutinized process. Appointees to the Commission shall serve a six-year term. At the end of said term, the president would have the power to reappoint or select a new appointee. Immediately upon assembling the Commission, each seat should be classified into one of three classifications. The term of the first seat shall expire at the second year, the term of the second seat at the expiration of the fourth year, and the term of the third seat at the expiration of the sixth year, so that one third may be reviewed every other year.¹³⁹

The composition and appointment process of the Cuban members to the Commission should mirror those of the United States. Ideally, the Cuban delegation would, at a minimum, include a member of the Cuban opposition and a senior officer in the Cuban government who has expertise in trade related matters. The Cuban government has perhaps the most discretion in whom they appoint. Because the Cuban government has the most to gain from this process, it would be in their interest to appoint qualified and intelligent delegates to the Commission.¹⁴⁰

136. Preferably an executive level member of CANF.

137. Bell, *supra* note 31. See also What is CANF?, available at <http://www.canfnet.org/>. The Cuban American National Foundation (CANF) is the world's largest Cuban exile organization and is comprised primarily of Cuban-Americans. Originally founded for the purpose of providing information and reporting of conditions in Cuba it has since developed into a formidable political action organization devoted to promoting "the ideals of respect for human rights and self-determination for the Cuban people."

138. An ideal nominee for the Department of Commerce appointee would be the Under Secretary for International Trade. However, every possible effort should be made to appoint a senior-level officer who is knowledgeable about international trade and business related matters.

139. The appointment process is similar to that outlined for United States Senators in Article 1, Section 3, of the United States Constitution. The option to appoint Commission members for the life of the Commission is certainly a viable one. However, I have chosen the staggered method of selecting appointees as a means of balancing the president's need to effectively exercise executive power over his administration with the need to maintain a Commission as free from direct political influences as possible.

140. The success of the Commission is based on the fundamental assumption that the Cuban government will appoint individuals with vision for a grander Cuba. Individuals who envisage a Cuba with renewed trading and cultural connections with the United States. A Cuba prepared to make a seamless transition into a new era of relations with its neighbors and to eventually re-assimilate into the world of peaceful nations.

The Secretary-General of the United Nations would also appoint a delegate to the Commission. The United Nations appointee would serve as senior member of the Commission and would act as administrative head of the Commission. The United Nations appointee would also have the power to establish Commission agenda's and to exercise veto or tie-breaking authority on Commission recommendations. Furthermore, the UN appointee would serve a six-year term whose seat would come up for review every sixth year.

Because the initial composition of the Commission is crucial to its success, I would recommend that a respected figure such as former Costa Rican President Oscar Arias¹⁴¹ be considered to lead the Commission as the United Nations delegate. President Arias has the proven record and reputation to ensure sincere and forthright efforts are made to minimize the impact of stonewalling tactics and political agendas by either the United States or the Cuban government. While distrust is unavoidable, it can be managed. The key to a successful and objective execution of the mandates of the Commission is to choose a United Nations appointee who can unite the delegates into a cohesive team. That delegate has to be a person that is familiar with the cultural and political nuances of the United States, Cuba, the Caribbean, and the hemisphere. President Oscar Arias is one of several ideal candidates.

Under a well-structured Commission, appointees of United States would have general and specific powers related to their representing the interests of the United States. For example, specific powers would restrict the Commission to act exclusively on matters regarding trade with Cuba; the same specific authority would be required for the Cuban appointees. General powers would include the authority to set recommended timetables for incrementally increasing trade, hearing grievances, and assembling data on trade. Furthermore, a well-structured Commission must be well funded. The Commission must have the ability to assemble and direct technical teams and to promote and fund trade shows.

The composition and authority of the Commission should be modeled in part after the Panama Canal Commission,¹⁴² with final policy-making authority resting on the respective heads of state. The Commission should only exist for the specified limited

141. Dr. Oscar Arias Sanchez, 1987 Nobel Peace Laureate and President of Costa Rica 1986-1990. President Arias is the founder of The Arias Foundation for Peace and Human Progress, a non-profit organization whose mission is to build just and peaceful societies in Central America, at <http://www.arias.or.cr/Eindice.htm>.

142. 22 U.S.C. § 3611 (2000) Panama Canal Commission. The Commission carries out the directives set forth in accordance with the Panama Canal Treaty of 1977 and very effectively accomplished the turnover of the Panama Canal on December 31, 1999 to Panamanian authorities. I reference the Panama Canal Commission because of its exemplary and orderly administration of a politically sensitive transition. The Panama Canal Commission consisted of nine members; the proposed Advisory Cuban Trade Commission would consist of seven individuals and would not have the same degree of administrative and policy implementing authority. However, upon establishing a Treaty Agreement with Cuba, which would be an integral first step in the process of normalizing relations, the makeup, language, and potential authority of the Advisory Cuban Trade Commission could be modeled similarly to that of the Panama Canal Commission. A Treaty, in this instance, being the agreement to set up a joint Commission to supervise and make recommendations for normalizing trade relations.

time¹⁴³ and with the express mandate of serving as a vehicle to improve economic relations between the United States and Cuban governments.¹⁴⁴ Finally, in order to preserve and promote real-time firsthand analysis of conditions in Cuba, the Advisory Commission should have its principle offices of operation in a neutral and secure United Nations facility in Havana.¹⁴⁵

C. ANCILLARY MEASURES TO ACHIEVING A FREE CUBAN SOCIETY.

The United States should promote extended educational contacts between the two countries by offering scholarships such as the Fulbright scholarship, for Cubans to study in the United States. The exchange of students, professors, and academics between U.S. and Cuban universities should be encouraged. For example, the application process for Fulbright scholarships could be administered through the U.S. Interest Section office in Havana.

It is critically important that the United States continue licensing the transfer of medicines to the Cuban population through credible third parties such as the Roman Catholic Church. The United States should continue to encourage trade shows and the exchange of technical training and knowledge through reduced visa restrictions for Cubans seeking to travel to the United States for educational purposes.

Finally, the United States should continue to make clear to Cuba and the world that it is interested in normalizing relations with Cuba within a definite time frame. It is essential to make the world focus on Title II of the *Libertad* Act (rather than on other better-known portions of the act), which outlines the procedure with which the embargo will be lifted and aid will be provided to Cuba. The United States should withdraw from its current one-for-one approach and concentrate on a thorough and concerted effort with the Cuban government to normalize relations.

More importantly, to facilitate a transfer of power in Cuba, the United States must drop from its factors for determining a transition government (found in Title II of the *Libertad* Act) the requirement that the new government not include Fidel or Raul Castro,¹⁴⁶ Frankly,

143. A one-time extension of six years may be considered if the United States and Cuban government reach unanimous agreement to the extension.

144. In a best-case scenario, the pre-determined degree of trade would be 100 percent free trade at the end of the twelve-year period, but in reality that would be difficult to achieve. However, from the current standpoint of virtually no trade with Cuba, any advances in easing trade restrictions could make a significant impact in the Cuban economy, the empowerment of the Cuban people and U.S. business interests.

145. Establishing a neutral and secure facility in Cuba, where the Commission can observe and assess firsthand information on trade developments in Cuba, is paramount. Secondary offices in Miami, New York or Washington, D.C. should also be considered.

146. 22 U.S.C. § 6065(a)(7) (2000). The pertinent language of the statute reads as follows [emphasis added]:

§ 6065—Requirements and factors for determining a transition government

(a) Requirements

For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

at this point in history, that requirement is not essential to guarantee democracy in Cuba. By working beyond the removing-of-Castro requirement, the focus of U.S. policy can change from one of trying to remove Castro from power to one of advocating democracy in Cuba. Moreover, it would allow the more realistic possibility of a democratic government where one or both Castros would either be removed from power, or would be relegated to a nominal position(s). One good option would be to do as Chile did with General Augusto Pinochet and grant the Castro brothers permanent Senator status in a transition government, thereby facilitating their fading away into obscurity.¹⁴⁷

Make no mistake, the criteria set forth in Title II of the Helms-Burton law is clear.¹⁴⁸ However, what should be important under Title II is that a new government must reasonably satisfy the substantive and result producing factors set forth in the language of the law. What is not stated anywhere in the Helms-Burton legislation, and which I think is of

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) *does not include Fidel Castro or Raul Castro*; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

147. CHILE CONST. Art 45, § A, (1980/1997 reforms), *available at* <http://www.georgetown.edu/LatAmerPolitical/Constitutions/Chile/chile97.html>. Like the Constitution of the United States, the Chilean Constitution allows for a bi-cameral legislative body constituting a Senate and House of Representatives. However, the Chilean Constitution includes a system of Senators for life that enjoy complete immunity under Chilean law. General Pinochet and a number of high-ranking officials from his administration occupy lifetime seats in the Senate and are thereby protected by parliamentary immunity.

148. 22 U.S.C. § 6065, *supra* note 144.

critical importance, is the need for the Cuban government to adopt internationally acceptable immunity and personal safety provisions for members of the outgoing regime.

An amnesty provision such as the one implemented by the Chilean government in 1978 may be a necessary mechanism to accelerate a transition government.¹⁴⁹ An amnesty provision is extremely significant because if the "bad" people in power cannot be guaranteed their personal safety and freedom from prosecution or persecution, then they simply will not relinquish power.¹⁵⁰ It is only natural economic evolution, as trade is normalized and the Cuban people gain increased economic prosperity they will also manifest political assertiveness, then, naturally, the ruling regime is likely to feel threatened. If that is the case, and no provisions are in place to guarantee the safety of the outgoing ruling regime as they are phased out, then it is reasonable to expect that the government will likely engage in acts of self-preservation rather than of furthering normalized trade relations. In other words, they will fight to stay in power for the simple reason that that is the only way they can survive. Of course, I bring forth this suggestion with full knowledge that drafting and accepting such a provision will require some ostensibly difficult concessions by domestic and international communities at large. It will also require some downright courageous politicking by parties involved; nonetheless, I think the end results would be worthwhile.

It is clear that our policy toward Cuba cannot continue in perpetuity. Through a controlled and measured process of lifting the embargo, Cubans across the island, from Pinar del Rio to Guantanamo, will realize prosperity and freedom. Unlike the abusive and decadent 1950s, Cubans will know in their hearts that while other countries only focused on business interests and profits, the United States stayed true to its principles of freedom and promoting self-determination.

149. Decreto No. 2191, 18 de abril de 1972, D.O. de 30.042.1978, *available at* <http://www.anfitrion.cl>. Decree Law no. 2191 is a declaration by the Chilean government granting amnesty to all persons having acted as a direct participant, accomplice, and accessory after the fact in connection with criminal acts during the period covering September 11, 1973 to March 10, 1978. Said period is purportedly the era in which elements of the Chilean military, and non-military entities, committed numerous crimes against political opposition members.

150. This article is premised on the need and desire for a peaceful transition and development of a new government in Cuba. Nevertheless, due to the passions and emotions involved we can assume that a certain number of violent retributions and "paybacks" are sure to occur; nonetheless, as distasteful as it may be, an effort has to be made to create a process whereby Castro-era officials may safely step down from power and make way for new leaders with new ideas.
